

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

CHRISTIAN HEYNE, et al.	)
	)
v.	) NO. 3:09-1041
	) JUDGE CAMPBELL
METROPOLITAN BOARD OF	)
PUBLIC EDUCATION	)

MEMORANDUM

Pending before the Court is Petitioners' Emergency Motion to Remand (Docket No. 5). For the reasons stated herein, Petitioners' Motion is GRANTED, and this action is remanded to the Chancery Court for Davidson County, Tennessee.

This action was originally brought in the Chancery Court for Davidson County, Tennessee, on January 22, 2009. The case has proceeded in state court since that time, including discovery and pretrial motions. A final hearing is scheduled for November 30, 2009.

On October 30, 2009, Respondent removed the action to this Court. Docket No. 1. Respondent based its removal on Petitioners' Second Amended Petition which, although not yet filed in the Chancery Court, was served upon Respondent on or about October 29, 2009. Respondent asserts that Petitioners' Second Amended Petition contains a cause of action arising under 42 U.S.C. § 1983, giving this Court jurisdiction to hear the case.

Petitioners' action seeks judicial review of a state agency determination - - - in this case, certain disciplinary action by the Metropolitan Board of Education. Petitioners' Second Amended Petition was filed in response to Respondent's Motion for Judgment on the Pleadings. In light of facts adduced during discovery, Petitioners were allowed to file a Second Amended Petition. The

Second Amended Petition still sought judicial review of the disciplinary actions taken against Christian Heyne. Although the Second Amended Petition does mention violations of Christian's constitutional rights, it does not allege a separate or new count for a federal civil rights claim.

Petitioners have represented to the Court that they do not intend to seek relief in the Chancery Court for constitutional violations or any federal claim.<sup>1</sup> Petitioners are the masters of their own Complaint, and the Court will not read into the Second Amended Petition a claim which is not there.

Accordingly, there is no basis for removal of this action to federal court, and Petitioners' Emergency Motion to Remand is GRANTED.

IT IS SO ORDERED.

  
TODD J. CAMPBELL  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> In light of this representation, Plaintiffs impliedly also represent that they do not intend to pursue any claim in the state court action for attorneys' fees pursuant to 42 U.S.C. § 1988.